by the appellants in the execution or intended execution of a public duty or authority. In my opinion, this was so and the appellants are entitled to the protection of the Ordinance. I therefore agree with the learned Chief Justice in thinking that on this ground the action fails and the Appeal should be allowed.

Appeal allowed.

CHUA YAM QUEE v. PEENA MOONA MOHAMED ABDUL HAMEED & ANOR.

[Court of Appeal (Murray-Aynsley, C. J., Evans and Thorogood, JJ.) May 4, 1950]

[Singapore — Civil Appeal No. 2 of 1950]

Debtor and Creditor (Occupation Period) Ordinance, 1949, s. 4(2)(b)(iii) — Mortgage paid off during Japanese occupation — Meaning of "such extended period as was mutually agreed".

This was an appeal against the judgment of Gordon-Smith, J. reported in (1950) M.L.J. 81. The facts were shortly as follows:— By an Order of Court of the 24th September 1941 the respondents were authorised as trustees to mortgage the property in question and in pursuance thereof by Mortgage dated 11th November 1941 conveyed the property to the appellant. The amount of the mortgage was $17,000.00 expressed to be repayable on the 11th December 1941 and interest thereon. By notice dated 28th April 2603 (1943) the appellant required payment of the mortgage. As a result the respondents had to apply to Court to sanction a fresh mortgage and this caused delay in payment. The appellant did nothing to enforce his security by sale or foreclosure and eventually after considerable delay and correspondence the mortgage money and all interest was repaid and a Reconveyance dated 9th February 2604 (1944) was executed and registered in the Registry of Deeds on the 18th of March 1944. On the 26th September 1949 the appellant gave a notice to the Registrar of Deeds under s. 18 of the Dealings in Land (Occupation Period) Ordinance, 1949, prohibiting any dealings with the land without due notice. The respondents thereupon applied by Originating Summons (a) for an Order to declare that the mortgage was discharged by the Reconveyance of 1944 and (b) for an Order that the notice in the Registry of Deeds be removed and the Registry of Deeds be rectified. The appellant, who was the respondent to the Originating Summons, claimed under s. 4 (2) (b) (iii) of the Debtor and Creditor (Occupation Period) Ordinance a revaluation and argued that the amount due had not been paid "within three months of demand or within such extended time as was mutually agreed between the creditor or his agent and the debtor or his agent." Gordon-Smith, J. held that on the facts of the case the period for repayment had been extended by mutual agreement. The appellant appealed.

Held, Per Murray-Aynsley, C.J.: that in this case there was in fact no mutual agreement to extend the time and no such agreement could be inferred from the conduct of the parties. The words "mutually agreed" in s. 4 (2) (b) (iii) of the Debtor and Creditor (Occupation Period) Ordinance, 1949, do not necessarily import an express agreement. As in the formation of a contract, agreement can be inferred from conduct. But since a mortgagee whose power of sale has arisen cannot refuse the mortgage money when tendered, it is impossible in this case to infer from the conduct of the parties any "mutual agreement" to postpone the date of repayment.

Per Evans, J.: The word "mutually" may seem tautologous and the consent of the debtor may appear immaterial; but the word "mutually" must be taken to have been deliberately inserted in the section and its meaning sought. It seems to be intended to mean a clear consent on both sides and to exclude all such matters as acquiescence and implied consent.

Per Thorogood, J.: The respondents' counsel having admitted that the mortgagee was bound to accept payment of the mortgage money when tendered there was nothing to justify the finding of the learned Judge of the Court of first instance that mere acceptance after the date fixed by the mortgagee for payment implied mutual agreement to extend the time so fixed. Normal principles of contract have been taken away by the Debtor and Creditor (Occupation Period) Ordinance, 1949, which was enacted to meet special circumstances arising from certain conditions obtaining in Malaya after 31st December 1943 and which must be strictly interpreted.

Semble: that full weight must be given to the use of the word "mutually" in the expression "mutually agreed".

APPEAL from the judgment of Gordon-Smith, J. reported in (1950) M.L.J. 81.

John Laycock and *Chong Thutt Pitt* for the appellant.

G. E. N. Oehlers for the respondents.

Cur. Adv. Vult.

Murray-Aynsley, C. J.: — This appeal raises a very short point under section 4 sub-section 2 (b) of the Debtor and Creditor (Occupation Period) Ordinance, 1949.

The facts are not in dispute and are set out in the judgment appealed from. The only question is whether the mortgage monies were repaid within three months of demand or within such extended period as was mutually agreed. The monies were not paid within three months; the question, therefore, is whether a further period was mutually agreed. I do not consider that the words "mutually agreed" necessarily import an express agreement. As in the formation of contract, agreement can be inferred from conduct. Can agreement be inferred from the conduct of the present appellant?

It is necessary to consider the circumstances of the time when repayment was made. The appellant was in the position of a mortgagee who wanted to be repaid. The respondents, the mortgagors, were trying to raise the necessary funds and, with the value of money falling all the time, had every reason to postpone the repayment as long as possible. After granting extensions from time to time the appellant finally refused any further extension. The money had not been repaid but the respondents were taking steps to secure the necessary funds.

The appellant had two courses of action open to him. He might have exercised his powers of sale, if he could have found a purchaser, or he could wait until the efforts of the respondents came to fruition. It is not at all certain that by exercising his power of sale the appellant would have been repaid any sooner. It is to be remembered that in any case the mortgagee could not have refused the mortgage money when tendered. A mortgagee in any case is usually unwilling to exercise his power of sale if he can get his money otherwise. In the circumstances I consider that it is impossible to infer from the conduct of the parties any "mutual agreement" to postpone the date of repayment. Such a forced interpretation of the conduct of the appellant would render the whole provision nugatory. It should be remembered that all the provisions of this Ordinance are extremely artificial and must be applied quite literally.

The appeal must be allowed and the mortgage reinstated as prayed by the appellant who is entitled to costs on the appropriate scale here and below.

Evans, J. : — The point in dispute in this appeal is quite short, and is whether the facts fall within Section 4(2)(b)(iii) of the Debtor and Creditor (Occupation Period) Ordinance 1949. This section deals with the discharge during the Japanese occupation of a pre-occupation debt, and provides that such payment in depreciated currency may be revalued :—

"(2) In any case:—

(b) where such payment was made after the thirty-first day of December, 1943, in occupation currency in respect of a pre-occupation capital debt, exceeding two hundred and fifty dollars in amount, which:—

(iii) if due and demanded as aforesaid was not paid within three months of demand or within such extended period as was mutually agreed between the creditor or his agent and the debtor or his agent;"

The appellant was mortgagee of the property of the respondents and on 28th April, 1943 he demanded immediate repayment of their debt threatening to exercise his power of sale after one month. Such demand does not necessarily entail sale of the security, but the appellant was put off with different stories, or excuses, regarding steps said to be taken to effect a sale until October 1943 when, on 18th, the appellant wrote referring to an abortive sale and saying that, if payment was not made in 30 days, he would exercise his power. On 15th November the respondents asked for an extension of time to the end of December; this was refused, but after further letters the appellant agreed by letter of 26th November to an extension of one fortnight from 18th November. In fact there were further long delays. A cheque in payment of the debt and interest was sent on 3rd February. The Reconveyance is dated 9th February when receipt of the payment is acknowledged. It is said the Reconveyance was signed on 15th January, but, if so, it would seem probable that it was merely signed as an escrow but the evidence is not clear.

Payment was thus made on 3rd — 9th February 1944 and this fact brings the case within the provision of law cited subject to the condition. It is not disputed that there was no express extension of time after 2nd December 1943, but the learned judge found that the appellant had acquiesced and must be taken to have agreed to a further extension. He seems to have relied particularly on the signing of the Reconveyance as evidence of this. Counsel for respondents argued that he had been guided by principles of contract, or of the formation of contracts, and that these applied. I do not think they do. It is a question of applying the provisions of an ordinance, and the evil at which it is aimed must be considered.

This law is dealing with the repayment of debts contracted in British currency but paid in greatly depreciated, and rapidly depreciating, Japanese currency. Had the matter been left to the courts these questions would have been decided on flexible and adaptable principles, very possibly based on the readiness in acceptance, or other evidence of the creditor's willingness to be paid in the currency offered. The legislature has thought fit to apply rigid and external tests. It clearly realised that in such circumstances the desire for payment evidenced by a demand may be very transitory. When it is remembered that in most cases the debt will be secured, and that, in practice, repayment will usually entail sale, the period of three months generally fixed is very short indeed. The provision is made in order to enable the creditor to claim a reassessment of what he has received when payment is made on demand but after a protracted delay. It is not unlikely that in a large majority of cases there is a ready acceptance, which would be the strongest evidence of acquiescence, but this is not the test the legislature has applied.

The language of the provision may be very open to criticism. It might seem unlikely that debtors or creditors at the date of these demands would anticipate that the Singapore Legislative Council would think fit to fix a period of three months for payment, and "extended" cannot, therefore, have its ordinary meaning. The first demand was for immediate payment, that of 18th October might be read as for payment in 30 days. On 26th November there was an extension

of a fortnight, but this itself expired within three months of the date of the second demand. This period of three months expired on 18th January, supposing demand in the Ordinance to include 2nd demand, as it well may.

Similarly "mutually" may seem tautologous, and the consent of the debtor may appear immaterial, but I agree with appellant that it must be taken to be deliberately inserted, and its meaning sought. I think here it is intended to mean a clear consent on both sides, and is intended to exclude all such matters as acquiescence and implied consent. The best evidence of these is acceptance of payment, but there must be payment to bring the case within the section at all. The construction put upon it by the learned judge would seem to me to vitiate this provision. In my opinion therefore the appeal should be allowed.

Thorogood, J. : — The only question in this appeal is whether the acceptance in February 1944 by the creditor of payment of principal and interest due, after he had in writing refused any extension of time for such payment after 2nd December 1943, amounted to a mutual agreement between the parties to extend the time for such payment as provided for in Section 4(2) (b) (iii) of the Debtor and Creditor (Occupation Period) Ordinance, 1949.

There is no direct evidence of such mutual agreement. Counsel for the respondents agreed with the appellant's contention that the latter was bound to accept payment when offered. The appellant being so bound there is nothing to justify the finding that mere acceptance after the date fixed by appellant for payment implied mutual agreement to extend the time so fixed.

The respondents relied on certain principles of contract but whatever case they might normally have had in contract has been taken away by the Debtor and Creditor (Occupation Period) Ordinance, 1949, which was enacted to meet special circumstances arising from certain conditions obtaining in Malaya after 31st December 1943 and which must be strictly interpreted.

In this case payment was made after 31st December 1943 in occupation currency in respect of a pre-occupation capital debt. There being no evidence of any mutual agreement to extend the time for payment after 2nd December 1943 until the actual date of payment, which was between 3rd and 9th February 1944, this case, in my opinion, is one for which specific provision is made in Section 4(2) (b) (iii) of the Ordinance. The appeal should be allowed with costs to appellant both here and below.

Appeal allowed.